

REMARKS

Claims 1-52 are pending in the instant application. Of these, claims 14, 18, 32, 36 and 41-46 are withdrawn. Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are under consideration, and stand rejected as final. Claims 1, 19, 43, 44 and 51 have been amended. Applicant respectfully requests reconsideration in view of the following remarks.

The Advisory Action dated January 25, 2010 stated that Applicant's proposed claim amendments of January 5, 2010 would **not** be entered, on grounds that the amendment changes the language and scope of the claims and necessitates further consideration and an updated search.

Applicant respectfully submits that the instant amendments are proper at the present stage of prosecution. Specifically, the amendments are offered in the context of a Request for Continued Examination (RCE). Accordingly, Applicant respectfully requests that the finality of the rejection be withdrawn, and that prosecution of the instant application resume.

Applicant respectfully submits that the amendments to the claims are fully supported by the specification as originally filed, either expressly or implicitly. See, for example, the paragraph bridging pages 19 and 20, and specifically the passage on page 19 between lines 20 and 26, which recites shaping the device prior to implantation. See also the passage in this same paragraph on page 20 between lines 6 and 9, which recites that the bending and maintenance of the bent shape is contemporaneous with the implantation procedure.

Claim Rejections – 35 USC §102

Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,920,203 to Tang et al. (hereinafter referred to as "Tang"). Applicant respectfully traverses this rejection.

The Action characterizes Tang as "including a resorbable, implantable biopolymer fixation device that can be fastened to tissue (see, e.g., Summary of the Invention; col. 7, lines 24-43; col. 8, lines 65-col. 9, line 2; col. 20, lines 41-62; col. 37, lines 67-68; col. 38, lines 9-10). The device is made of one or more layers of a porous material and can comprise an additional material in the form of various fillers and additives and active agents (id.)."

Applicant respectfully submits that Tang neither expressly nor implicitly discloses the invention of independent claim 19 and its dependents featuring

wherein at least at room temperature and within a period of time that is from prior to said implantation up through said implantation, said porous body intrinsically possesses the characteristics of being capable of being smoothly bent upon exposure to a bending force, said bending collapsing a portion of the pores to

form a radius curve, whereby said porous body (a) maintains said radius curve upon removal of the bending force, and (b) is rigid enough to protect a tissue fixed to said device from shifting.

The Action asserts that the Tang device could be maintained in its bent or deformed shape by allowing cells or tissue to grow into the device. As such, the claimed invention as amended now clearly distinguishes over this scenario, assuming *arguendo* that the Tang device could be made to function in the way envisioned by the Action. The ability of the claimed device to maintain its new bent shape prior to and contemporaneous with the implantation procedure is important for making the device and procedure expedient and thus practical. Independent claims 1, 43, 44 and 51 feature amendments that are similar to that of independent claim 19.

Accordingly, Applicant respectfully requests that this rejection be withdrawn.

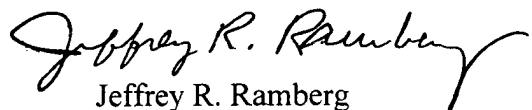
Rejoinder

Withdrawn claims can be rejoined if they are species of an allowable genus claim. Withdrawn claims 14, 18, 32, 36 and 41-46 are either dependent from, or have been amended to include all of the limitations of independent claim 1. As Applicant respectfully submits that claim 1 is in allowable condition, and being that the withdrawn claims are a species of this allowable genus claim, the withdrawn claims therefore should be in condition for rejoinder, and such is respectfully requested.

In view of the above remarks, Applicant respectfully submits that the instant application is in condition for allowance. Accordingly, Applicant respectfully requests issuance of a Notice of Allowance directed to claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52. Applicant furthermore requests that claims 14, 18, 32, 36 and 41-46 be rejoined.

Should the Patent Office deem that any further action on the part of Applicant would be desirable, the Office is invited to telephone Applicant's undersigned representative.

Respectfully submitted,


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